

United States
COURT OF APPEALS
for the Ninth Circuit

STATES STEAMSHIP COMPANY, a corporation, *Appellant,*
v.

UNITED STATES OF AMERICA, ATLANTIC MUTUAL IN-
SURANCE COMPANY, PACIFIC NATIONAL FIRE IN-
SURANCE COMPANY and THE DOMINION OF CANADA,
Appellees.

ATLANTIC MUTUAL INSURANCE COMPANY, *Appellant,*
v.

STATES STEAMSHIP COMPANY, a corporation, UNITED
STATES OF AMERICA and THE DOMINION OF CANADA,
Appellees.

PACIFIC NATIONAL FIRE INSURANCE COMPANY,
Appellant,
v.

STATES STEAMSHIP COMPANY, UNITED STATES OF
AMERICA and THE DOMINION OF CANADA, *Appellees.*

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Appellant,
v.

STATES STEAMSHIP COMPANY, ATLANTIC MUTUAL
INSURANCE COMPANY, PACIFIC NATIONAL FIRE IN-
SURANCE COMPANY and THE UNITED STATES OF
AMERICA,
Appellees.

**REPLY BRIEF OF PETITIONER-APPELLANT STATES STEAMSHIP COM-
PANY REPLYING TO THE ANSWERING BRIEF OF THE UNITED STATES
OF AMERICA HEREINAFTER CALLED THE GOVERNMENT BRIEF**

*Appeal from the United States District Court for the
District of Oregon.*

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We find it unnecessary to reply to the Government Brief, except in one particular.

BATTENS

In the Government's Opening Brief counsel cited Title 46, Code of Federal Regulations, § 144.10-80, regarding hatches (p. 51).

In our Answering Brief, we pointed out that this Regulation did not come into effect until eleven months after the loss of the PENNSYLVANIA (Ans. Br. 50).

Now the Government in its Answering Brief says that § 144.10-80 was miscited, and as an alternative falls back on § 43.10-35, reading as follows:

“§ 43.10-35 *Battens and Wedges*. (a) Battens and wedges are to be efficient and in good condition.” (Govt. Ans. Br. 31).

This Regulation appears in Subchapter E of Chapter I of Title 46 C.F.R., pertaining to Load Lines. Subchapter E in its present form, with its inclusion of § 43.10-35, was not promulgated until October 18th, 1952 (17 F.R. 9309), about ten months after the PENNSYLVANIA was lost. However, the same language appears under a different section number in the previous version of Subchapter E, and we therefore ignore the difference in time.

The language does not have the effect claimed for it by the Government. It is contained in a section of the Regulation relative only to *Load Lines*. Subchapter E is entitled “Load Lines.” Subpart 43.10 is entitled “*Conditions of Assignment of Load Lines*” (emphasis supplied). § 43.10-1 (a) reads as follows:—

"§ 43.10-1 *Construction of Vessel*. (a) The assignment of load lines is conditional upon the vessel being structurally efficient and upon the provision of effective protection to vessel and crew."

Then follow various prerequisites to the vessel having a load line assigned to it. § 43.10-30 specifies the type of cleats (to hold the battens and wedges around the sides and ends of the hatches). Then comes the language now relied on by the Government, which is in § 43.10-35:

"§ 43.10-35 *Battens and Wedges*. (a) Battens and wedges are to be efficient and in good condition."

This can have no possible application to this case for two reasons: First, the Regulation is only a prescribed *condition precedent* to ships having assigned to them a load line. Once the load line is assigned, the condition has fulfilled its function. The PENNSYLVANIA had a load line assigned to it, thus showing that the prescribed condition had been fulfilled, and that her battens were good.

Second, there is no complaint anywhere in this record against the ship's *battens*. This Admiralty Court knows full well what the battens are,—the steel straps that go *around* the hatch coamings and under which the tarpaulins are tucked and the battens held in place by wedges driven into the cleats. There is not a syllable of complaint against them in this case. The only complaint (and a weak one at that) is against those steel straps going across the *top* of the hatch and variously denominated as "cross-battens," "storm battens," or "locking bars,"—entirely different things from the battens, and not required by the regulations. In fact, in Mr. Vallet's

testimony, where counsel for the Insurance Companies was getting Mr. Vallet to enumerate the various appurtenances of a hatch, counsel himself distinguished between the "battens" and the "storm battens" or "locking bars" (Tr. 307).

Incidentally, we do not think the mass of hundreds of Coast Guard administrative regulations, with their minutiae of detail, should be used as a basis for applying the Pennsylvania Rule, followed in *The Denali*, as attempted here by counsel; and certainly not where no specific Regulation, such as one specifying the thickness of steel plate, for example, is in question, but merely a general one, like this one of the battens, saying that they must be "efficient and in good condition."

Respectfully submitted,

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